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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,583	11/03/2000	Richard L. Mueller	5756-0008.30	6174

7590 07/16/2002

MICROHEART, INC.  
2634 BAYSHORE PARKWAY  
MOUNTAIN VEW, CA 94043

EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

7e

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/706,583	MUELLER ET AL.
Examiner	Art Unit	
Frances P. Oropeza	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 03 November 2000.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-9 are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s). 10

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, drawn to method of treating a patient for ischemia, classified in class 600, subclass 500.
  - II. Claims 8-9, drawn to a monitor worn after a surgical procedure, classified in class 600, subclass 500.

The inventions are distinct, each from the other because of the following reasons:

Inventions I. and II. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I. has separate utility such as a method of treating a patient suffering from or at risk of suffering from cardiac ischemia not requiring use of a monitor with a display to identify regions in need of enhanced vascularization and to induce capillary blush in such regions but rather using a monitor with tactile simulation to communicate exercise levels to the patient. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Peter J. Dehlinger on 7/11/02 to request an oral election to the above restriction requirement, but did not result in an election being made. Mr. Dehlinger is out of the office for several weeks and his assistant Ramona Thomas Scott asked that the restriction be mailed.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communication and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza  
Patent Examiner  
Art Unit 3762

110  
7/11/02

JEFFREY R. JASTRZAB  
PRIMARY EXAMINER

7/11/02

FACSIMILE COVER SHEET

Our Reference: 09/706,583  
Your Reference: 10177-137-999

Date: 1/17/03  
To: James Barnes (212) 790-2987  
Firm: Faro and Associates  
Telephone Facsimile Number: (212) 869-9741

Total pages including cover: 7

From: Frances P. Oropeza  
U.S. Patent and Trademark Office  
Telephone: 703-605-4355  
Facsimile: 703-306-4520

Message:

Dear Mr. Barnes,

As requested, please find attached a copy of the restriction requirement,  
Paper No. 7 and Interview Summary, Paper No. 6.

Sincerely yours,  
Fran Oropeza

*Fran*  
*1/17/03*

Paper No. 7